

REMARKS

I. Introduction

Applicants gratefully acknowledge the courtesy extended to their representative by Examiners Pryor and Padmanabhan during the personal interview on September 20, 2005. The comments below and the accompanying declaration under 37 C.F.R. 1.132 (“declaration”) expressly incorporate the substance of the interview. Applicants therefore kindly request reconsideration of the present application.

II. Status of the Claims

Claims 1-33, 39, and 40 were cancelled previously. Claim 46 is presented anew, and it is identical to previously examined, allowed, and then rejected claim 33. Thus, claims 34-38 and 41-46 are pending. During the interview, the Examiners helpfully pointed out that claims 35, 37, 38, and 45 are allowed.

All pending claims have been amended simply to harmonize the recitation of composition components within each claim. The amendments do not introduce any new matter nor do they alter the scope of the claims.

III. The Office Action

A. Claim Objections

The PTO objected to claims 35, 37, 38, and 45 for allegedly depending upon rejected based claims. However, these claims are independent, and they are not otherwise rejected. Accordingly, the claims should be allowed, as indicated during the interview, and the objection should be withdrawn.

B. Rejection of Claims Under 35 U.S.C. § 103(a)

The PTO rejected claims 34, 36, and 41-44 under 35 U.S.C. § 103(a) as being allegedly obvious over two (2) separate combinations of publications: (1) EP598515 to Hayashi *et al.* (“Hayashi”) and EP598404 to Hirabayashi *et al.* (“EP Hirabayashi”); and (2)

U.S. Pat. No. 5,436,225 to Hirabayashi *et al.* (“US Hirabayashi”) and U.S. Pat. No. 5,346,879 to Manabe *et al.* (“Manabe”). To simplify the following discussion, Applicants note that the Hirabayashi publications are essentially identical to each other, and Applicants therefore refer to them collectively as “Hirabayashi.”

1. The PTO’s Ground for Rejections

With respect to combination (1), the PTO relied upon Hayashi for its disclosure of an herbicidal composition comprising 1-95% mineral oil and 1-65% emulsifier (ethoxylated fatty amine), notwithstanding its failure to teach the claimed 5-25% ammonium salt of an inorganic anion. Office Action at page 2. The PTO relied additionally upon Hirabayashi for its disclosing a specific herbicidal composition containing 5% ammonium chloride, notwithstanding the publication’s silence as to any concentrations of the claimed oil or alkyl ester of a fatty acid, nitrogen-containing water-soluble substance, and cationic emulsifier. The PTO concluded in the first instance that combining the two herbicidal compositions of the cited prior art would have been obvious to a person of ordinary skill. In the second instance, the PTO elaborated that the broad or non-existent prior art disclosures of the oil and surfactant concentrations overlap and therefore render obvious the claimed narrower concentrations absent evidence of their “criticality.”

With respect to combination (2), the PTO similarly concluded that a person of ordinary skill would have considered it obvious to select the oil and surfactant disclosed by Hirabayashi for combination with alkyltrimethylammonium chloride (a cationic emulsifier), among many others, taught by Manabe to arrive at the claimed compositions. Office Action at page 3. This is so in spite of the fact that Manabe does not teach any concentrations for the emulsifier. *Id.*

The Examiners helpfully indicated that evidence of unexpected results would overcome these grounds for rejection. *See* Interview Summary mailed September 21, 2005. Applicants now provide those results, and consequently they traverse the rejections.

2. The Prior Art Does Not Teach or Suggest the Claimed Ranges, Which Are Critical to Achieve Stable and Homogeneous Compositions

There is no question that neither combination of references teaches or suggests the claimed components in the specific claimed concentrations. Thus even if the disclosures of broad concentration ranges of the cited prior art create a presumption of obviousness, which Applicants do not concede, Applicants' accompanying declaration provides evidence of unexpected and superior results that are sufficient to rebut the mere presumption.

Specifically, the declaration at paragraphs 2-10 describes exactly the significance of achieving homogeneous liquid compositions as claimed. The exercise in doing so is not a trivial one. Moreover, as explained below, none of the cited prior art remotely suggests that significance, much less provides guidance on how to obtain a homogeneous liquid composition.

The claimed concentration ranges are critical to achieving stable homogeneous compositions (see declaration at paragraph 11 *et seq.*), and deviations from those ranges markedly result in non-homogeneous compositions. Because the cited prior art, in the aggregate, teach only very broad ranges or none at all, the prior art does not recognize or otherwise suggest the criticality of the claimed ranges.

Furthermore, the declaration highlights an insurmountable challenge that would have confronted a person of ordinary skill who wished to make compositions of the claimed components. Absent the insight provided by Applicants' disclosure, the person could not have simply plucked the components from the cited prior art disclosures in any given concentrations as taught by the art and have expected to obtain the claimed compositions. This is so because the cited references provide no starting point, no teaching as to what components should be present in what concentrations, and no teaching that a homogeneous composition, if accidentally obtained, would even have been a desirable goal.

Because the cited prior art does not teach or suggest the secondary indicia of non-obviousness described in the declaration, the person of ordinary skill in the art would not have considered the claimed compositions to have been obvious. Consequently, neither

combination of references renders the claimed invention unpatentable. Accordingly, Applicants respectfully urge the PTO to reconsider and withdraw the rejections.

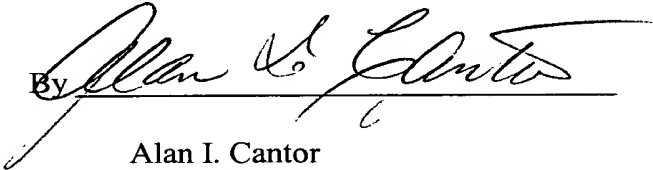
IV. Conclusion

Having now complied with the Examiners' specific request to show unexpected results, Applicants believe that the present application is in condition for allowance. Applicants earnestly seek allowance of this application, and in view of the lengthy prosecution, Applicants courteously urge the Examiner to contact the undersigned by telephone if he feels that any issues or concerns need to be resolved prior to allowance.

Respectfully submitted,

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FOLEY & LARDNER LLP
Customer Number: 22428
Telephone: (202) 672-5570
Facsimile: (202) 672-5399

By 

Alan I. Cantor
Attorney for Applicant
Registration No. 28,163

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.